

Environmental Protection Agency,  
Region II Office, Library 16th Floor,  
290 Broadway 20th Floor, New York,  
New York 10007-1866.

New Jersey Department of  
Environmental Protection, Office of  
Air Quality Management, Bureau of  
Air Quality Planning, 401 East State  
Street, CN418, Trenton, New Jersey  
08625.

**FOR FURTHER INFORMATION CONTACT:**  
Demian Ellis, Air Programs Branch,  
Environmental Protection Agency, 290  
Broadway 20th Floor, New York, New  
York 10007-1866, (212) 637-4249.

**SUPPLEMENTARY INFORMATION:** For  
additional information see the direct  
final rule which is published in the  
rules section of this Federal Register.

Dated: September 18, 1995.

William J. Muszynski,  
*Deputy Regional Administrator.*

[FR Doc. 95-24462 Filed 9-29-95; 8:45 am]

BILLING CODE 6560-50-P

#### 40 CFR Part 52

[Region II Docket No. 145; NJ16-1-6470,  
FRL-5309-3]

#### **Approval and Promulgation of Implementation Plans; Reasonably Available Control Technology for Oxides of Nitrogen for the State of New Jersey**

**AGENCY:** Environmental Protection  
Agency (EPA).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The EPA proposes approval of  
revisions to the State Implementation  
Plan (SIP) for ozone submitted by the  
State of New Jersey. This portion of the  
implementation plan was submitted by  
the State to satisfy Clean Air Act (the  
Act) requirements for adoption of rules  
for the application of reasonably  
available control technology (RACT) for  
oxides of nitrogen (NO<sub>x</sub>) in the entire  
State. The Act requires implementation  
of NO<sub>x</sub> RACT at major stationary  
sources of NO<sub>x</sub> emissions in the State of  
New Jersey by May 31, 1995.

**DATES:** Comments must be received on  
or before November 1, 1995.

**ADDRESSES:** All comments should be  
addressed to: William S. Baker, Chief,  
Air Programs Branch, Environmental  
Protection Agency, Region II Office, 290  
Broadway, Twentieth Floor, New York,  
New York 10007-1866.

Copies of the state submittal and other  
information are available at the  
following addresses for inspection  
during normal business hours:

Environmental Protection Agency,  
Region II Office, Air Programs Branch,

290 Broadway, Twentieth floor, New  
York, New York 10007-1866.

New Jersey Department of  
Environmental Protection, Office of Air  
Quality Management, Bureau of Air  
Quality Planning, 401 East State Street,  
CN418, Trenton, New Jersey 08625.

**FOR FURTHER INFORMATION CONTACT:** Ted  
Gardella, Air Programs Branch,  
Environmental Protection Agency, 290  
Broadway, Twentieth floor, New York,  
New York 10007-1866, (212) 637-4249.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

The air quality planning requirements  
for the reduction of NO<sub>x</sub> emissions  
through RACT are set out in Section  
182(f) of the Act. Section 182(f)  
requirements are described by EPA in a  
notice, "State Implementation Plans;  
Nitrogen Oxides Supplement to the  
General Preamble; Clean Air Act  
Amendments of 1990 Implementation of  
Title I; Proposed Rule," published  
November 25, 1992 (57 FR 55620). The  
November 25, 1992 notice should be  
referred to for detailed information on  
the NO<sub>x</sub> requirements. Additional  
guidance memoranda which have been  
released subsequent to the NO<sub>x</sub>  
Supplement should also be referred to.

The EPA has defined RACT as the  
lowest emission limitation that a  
particular source is capable of meeting  
by the application of control technology  
that is reasonably available considering  
technological and economic feasibility  
(44 FR 53762; September 17, 1979).

Section 182(f) of the Act requires  
states within moderate or above ozone  
nonattainment areas or the ozone  
transport region to apply the same  
requirements to major stationary sources  
of NO<sub>x</sub> ("major" as defined in Section  
302 and Section 182(c), (d), and (e)) as  
are applied to major stationary sources  
of volatile organic compounds (VOCs).  
For more information on what  
constitutes a major source, see Section  
2 of the NO<sub>x</sub> Supplement to the General  
Preamble.

Section 182(b)(2) requires submittal of  
RACT rules for major stationary sources  
of VOC emissions (not covered by a pre-  
enactment control technique guidelines  
(CTG) document or a post-enactment  
CTG document) by November 15, 1992.  
There were no NO<sub>x</sub> CTGs issued before  
enactment and EPA has not issued a  
CTG document for any NO<sub>x</sub> sources  
since enactment. States, in their RACT  
rules, are expected to require final  
installation of the actual NO<sub>x</sub> controls  
by May 31, 1995 from those sources for  
which installation by that date is  
practicable.

States within the Northeast ozone  
transport region established by section  
184(a) should have revised their SIPs to  
include the RACT measures by  
November 15, 1992. Because states in a  
transport region are generally subject to  
at least the moderate area requirements,  
EPA believes that the schedule for  
implementing these RACT rules in the  
ozone transport region should be  
consistent with the requirements of  
Section 182(b)(2) and will be expected  
to require final installation of the actual  
NO<sub>x</sub> controls by May 31, 1995 on those  
sources for which installation by that  
date is practicable. Based on Section  
182(f), New Jersey is required to apply  
the NO<sub>x</sub> RACT requirements Statewide.

##### **II. State Submittal**

On November 15, 1993 New Jersey  
submitted to EPA as a revision to the  
SIP, Subchapter 19, "Control and  
Prohibition of Air Pollution From  
Oxides of Nitrogen" of Chapter 27, Title  
7 of the New Jersey Administrative Code  
with an effective date of December 20,  
1993. Subchapter 19 contains the NO<sub>x</sub>  
RACT requirements for the State. New  
Jersey held public hearings on  
Subchapter 19 in March 1993 and it was  
adopted on November 15, 1993. EPA  
reviewed the plan to determine  
completeness in accordance with  
criteria set out at 40 CFR 51. The  
submittal was found to be  
administratively and technically  
complete, and a letter dated December  
29, 1993 was forwarded to the  
Commissioner indicating the  
completeness of the submittal and the  
next steps to be taken in the review  
process.

It is important to note that New Jersey  
is a member of the Northeast States for  
Coordinated Air Use Management  
(Nescaum) and the Ozone Transport  
Commission (OTC), which seek to  
develop a consistent NO<sub>x</sub> reduction  
strategy for ozone attainment in the  
Northeast. New Jersey's NO<sub>x</sub> RACT plan  
is consistent with the recommendations  
of these groups, which are generally  
more stringent than EPA requirements.

For a more detailed discussion of New  
Jersey's submittal and EPA's proposed  
action on the submittal, the reader  
should refer to the Technical Support  
Document developed as part of this  
proposed action and found at the  
previously mentioned addresses.

### III. Analysis of New Jersey's SIP Submission

#### A. RACT Determination and Implementation

##### 1. Utility Boilers

Section 19.4 of Subchapter 19 specifies the emission limitations for utility boilers and three alternative ways for utility boilers to comply: averaging, fuel switching, and repowering. Maximum allowable NO<sub>x</sub> emission rates, expressed as pounds NO<sub>x</sub> per million BTUs (lb. NO<sub>x</sub>/MM BTU), range from 0.2 to 1.0 depending on the type of boiler and the type of fuel. Section 19.4 also requires utility boilers to install a continuous emission monitoring system. The emission limits specified by New Jersey are consistent with those recommended by the EPA in the NO<sub>x</sub> Supplement. The emission limits are enforceable through appropriate averaging times, test methods, compliance schedules and reporting and recordkeeping requirements.

New Jersey's provisions allow utilities to comply with the NO<sub>x</sub> RACT requirements by using an averaging plan throughout the State including areas with different nonattainment classifications. This alternative is further reviewed in Part III.A.3. of this document.

New Jersey's fuel switching provision is consistent with EPA guidance which basically states that annual emissions of NO<sub>x</sub> must be less than or equal to annual emissions that would result from continuous compliance with presumptive NO<sub>x</sub> RACT.

New Jersey's repowering provision meets all of the requirements in EPA's guidance. Repowering is simply the replacement of the steam generator in a steam generating unit. New Jersey's provision requires interim RACT to begin by May 1, 1995 and for the repower to be completed by May 15, 1999. New Jersey defines interim RACT as annual adjustments to the combustion process.

##### 2. Stationary Gas Turbines

Section 19.5 specifies the maximum allowable NO<sub>x</sub> emission rates (lb. NO<sub>x</sub>/MM BTU) ranging from 0.15 to 0.4 depending on the type of turbine and the type of fuel. Alternatively, compliance can be met through an averaging plan or where it can be shown that there is an insufficient supply of water to the turbine and that there is no commercially available dry low-NO<sub>x</sub> combustor suitable. In this latter case, the owner/operator must obtain approval of this waiver from New Jersey

in accordance with Section 19.14 and in addition, the combustion process of the turbine must be annually adjusted.

New Jersey's emission limitations are consistent with EPA's general guidance. The emission limits are enforceable through appropriate averaging times, test methods, compliance schedules and reporting and recordkeeping requirements.

##### 3. Emissions Averaging

Section 19.6 allows sources to comply with the regulation with an averaging plan. Any person owning or operating at least two items of equipment or source operations may request the Department's approval of an averaging plan. The person developing an averaging plan must identify the equipment and source operations to be included in the plan. The averaging units included in the plan may be located at one or more sites throughout the State, but must be owned and operated by the same person. The central part of the application for an averaging plan is the demonstration that if all averaging units included in the designated set are operating at maximum design capacity, their total emissions will be no greater than the total emissions which would be allowed from all of the averaging units if they were subject to the 'presumptive' RACT emission limits.

This averaging provision is not intended to be a generic trading rule covering all pollutants but is a limited trading rule for meeting NO<sub>x</sub> RACT requirements. The New Jersey regulation is limited in scope, time, and types of sources which can trade and is intended to be an interim step in achieving future ozone attainment. New Jersey's averaging provision met the general EPA guidance (NO<sub>x</sub> Preamble) when these rules were proposed and adopted by the State. New Jersey, in consultation with the OTC states and EPA, is currently developing future trading rules which will have broader applicability. New Jersey's averaging provision is satisfactory in that it meets EPA's policy that was in existence at the time it was adopted by the State, however there are some differences from current EPA trading policy. These differences include: (1) definition of a violation, (2) improved audit procedures, (3) a reconciliation procedure, (4) specification of baseline emissions, and (5) the effects on credits of newly adopted rules. The State's revisions will address these areas and strengthen the NO<sub>x</sub> RACT regulations.

New Jersey's averaging plan is consistent with EPA's general guidance (NO<sub>x</sub> Preamble). The averaging plan is

enforceable through appropriate averaging times, test methods, compliance schedules and reporting and recordkeeping requirements.

##### 4. Non-Utility Boilers

Section 19.7 specifies the requirements for non-utility boilers. The control strategy depends on the maximum gross heat input rate of the non-utility boiler, the type of boiler and the type of fuel used. Smaller boilers are required to annually adjust the combustion process to minimize NO<sub>x</sub> emissions, while the larger size boilers must meet emission limits (lb. NO<sub>x</sub>/MM BTU) ranging from 0.1 to 1.0. Also, any non-utility boilers with a maximum gross heat input rate of at least 250 million BTUs per hour shall install a continuous emissions monitoring system.

The emission limits specified by New Jersey are consistent with those recommended by the EPA in the NO<sub>x</sub> Supplement. The emission limits are enforceable through appropriate averaging times, test methods, compliance schedules and reporting and recordkeeping requirements.

##### 5. Stationary Internal Combustion Engines

Section 19.8 establishes NO<sub>x</sub> emission limits for stationary internal combustion engines. The emission limitations, expressed as grams NO<sub>x</sub> per horsepower-hour, range from 1.5 to 8.0 depending on the type of engine and the type of fuel used.

New Jersey's emission limits are consistent with EPA's general guidance and with those suggested by NESCAUM. The emission limits are enforceable through appropriate averaging times, test methods, compliance schedules and reporting and recordkeeping requirements.

##### 6. Asphalt Plants

Section 19.9 establishes NO<sub>x</sub> emission limits for asphalt plants depending on the type of plant. The emission limit for these sources is 200 parts per million (dry, volume basis) at seven percent oxygen content. In addition to establishing emission limits, the regulation requires the burner of an aggregate dryer to be adjusted annually to reduce emissions of all pollutants.

New Jersey's emission limitations are consistent with EPA's general guidance. The emission limits are enforceable through appropriate averaging times, test methods, compliance schedules and reporting and recordkeeping requirements.

## 7. Glass Manufacturing Furnaces

Section 19.10 establishes NO<sub>x</sub> emission limits for glass manufacturing furnaces. The limitations depend on the type of glass manufactured by the furnace.

The emission limits, expressed as pounds NO<sub>x</sub> per ton of glass removal from the furnace, for commercial container and specialty container glass manufacturing are 5.5 and 11.0 respectively. In the case of borosilicate recipe glass manufacturing furnaces, a baseline NO<sub>x</sub> emission rate must be determined by January 1, 1994 and a plan must be submitted by July 1, 1994 explaining how those baseline emissions will be reduced by 30 percent. The furnace must then implement the plan and reduce its emissions accordingly. In addition, the owner or operator of a glass manufacturing furnace must annually adjust the combustion process of the furnace beginning in May 1994.

The Department has determined that glass furnaces will become subject to the specific emission limitations on May 1, 1997, unless the furnace is 'rebricked' before that date, in which case the furnace becomes subject to the emission limitations upon the date the rebricking is completed.

EPA accepts the technical and economic rationale presented by New Jersey in their proposed rule for the emission limits as adopted. EPA's policy allows states to extend the repowering guidance to other source categories. New Jersey's rebricking provisions meet all of the requirements in EPA's guidance. New Jersey's provision requires interim RACT to begin on May 1, 1994 and to rebrick and comply with the emission limits by May 1, 1997 or the first date after rebricking is completed, whichever is earlier. New Jersey defines interim RACT as annual adjustments to the combustion process.

New Jersey's emission limitations are consistent with EPA's general guidance and therefore, acceptable to the Agency. The emission limits are enforceable through appropriate averaging times, test methods, compliance schedules and reporting and recordkeeping requirements.

## 8. Facility-Specific NO<sub>x</sub> Emission Limits

Section 19.13 establishes a procedure for a case-by-case determination of what represents RACT for a particular facility, item of equipment or source operation. This procedure is applicable in two situations: (1) if a major NO<sub>x</sub> facility contains any source operation or item of equipment not listed in 19.2, or (2) if the

owner or operator of a source operation or item of equipment that is listed in 19.2 seeks approval of an alternative maximum allowable emission rate.

New Jersey's procedure entails the owners and/or operators of the effected facility to propose a NO<sub>x</sub> control plan or request for an alternative maximum allowable emission rate. The owners/operator are to include a technical and economic feasibility analysis of the possible alternative control measures. For each case, the regulations provide for the Department to establish emission limits based upon a RACT determination specific to the facility in question. The resulting control plan or alternate maximum allowable emission rate would be submitted for approval as a SIP revision.

Section 19.13(l) identifies the reasons why the State "may" revoke an approval of a NO<sub>x</sub> control plan. One reason would be an EPA disapproval of the plan after EPA rulemaking action. The State indicates that "may" does not apply to EPA disapprovals and that in a forthcoming amendment to Subchapter 19, New Jersey will clarify this. They will revise Sections 19.13(l)(3) and 19.13(h) to say that upon EPA disapproval of a specific NO<sub>x</sub> plan, New Jersey will revoke the plan. EPA is proposing to approve this provision because the New Jersey explanation is acceptable and, regardless, EPA has adequate authority under the Act to require the state to correct any EPA identified deficiencies.

For sources not subject to specific emission limitations or work practice standards, Section 19.13 provides a procedure and schedule which must be followed in order to comply with Subchapter 19. Should a source not comply with this procedure it would constitute a violation of Subchapter 19 and would subject the source owner or operator to civil and applicable criminal penalties. EPA believes this is sufficient to insure that sources comply and should EPA have to take enforcement action, it could use the same provisions to obtain compliance.

## 9. Exemptions

Section 19.2 contains provisions to exempt equipment and source operations. The following summarizes these exemptions:

1. Emergency generators which operate less than 500 hours annually and have a potential to emit less than 25 tons of NO<sub>x</sub>. This exemption provision is consistent with the Act since all sources with a potential to emit less than 25 tons per year of NO<sub>x</sub> are not subject to NO<sub>x</sub> emission limitations.

2. Equipment or source operations where the EPA Administrator determines that the

net air quality benefits are greater in the absence of NO<sub>x</sub> reductions. This provision conforms to Section 182(f) of the Act providing for this NO<sub>x</sub> RACT exemption.

3. NO<sub>x</sub> sources with a potential to emit less than 25 tons per year and with the potential to emit less than 137 pounds per day during the ozone season. This provision is consistent with the Act as indicated in the first exemption above.

## 10. Other Provisions

The following are administrative and procedural provisions to Subchapter 19 which were reviewed by EPA: definitions; general provisions; procedures for obtaining approvals and demonstrating compliance; requirements for adjusting the combustion process; emission testing, monitoring, and recordkeeping; and civil penalties. EPA has evaluated these provisions in Subchapter 19 for consistency with EPA policy and has determined that they meet the requirements and are therefore acceptable to the Agency.

## IV. Summary

The EPA is proposing full approval of Subchapter 19, "Control and Prohibition of Air Pollution From Oxides of Nitrogen" submitted by the State of New Jersey on November 15, 1993 for the marginal, moderate, and severe ozone nonattainment areas. New Jersey has applied Subchapter 19 to the entire State.

Nothing in this proposed rule should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. § 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. §§ 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under Section 110 and Subchapter I, Part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected.

Moreover, due to the nature of the federal-state relationship under the Clean Air Act, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v US EPA*, 427 US 246, 256-66 (S.Ct. 1976); 42 U.S.C. § 7410(a)(2).

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a federal mandate that may result in estimated annual costs of \$100 million or more to the private sector, or to state, local, or tribal governments in the aggregate.

Through submission of this state implementation plan revision, the state and any affected local or tribal governments have elected to adopt the program provided for under Section 182(f) of the Clean Air Act. These rules may bind state, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being proposed for approval by this action would impose any mandate upon the state, local or tribal governments either as the owner or operator of a source or as a regulator, or would impose any mandate upon the private sector, EPA's action would impose no new requirements; such sources are already subject to these regulations under state law. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this proposed action does not include a mandate that may result in estimated annual costs of \$100 million or more to state, local, or tribal governments in the aggregate or to the private sector.

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

#### List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone,

#### Reporting and recordkeeping requirements.

Authority: 42 U.S.C 7401-7671q.

Dated: September 15, 1995.

William J. Muszynski,

*Deputy Regional Administrator.*

[FR Doc. 95-24451 Filed 9-29-95; 8:45 am]

BILLING CODE 6560-50-P

#### 40 CFR Parts 52 and 81

[LA-15-1-6073b; FRL-5307-5]

#### Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of Louisiana; Approval of the Maintenance Plan for the New Orleans Consolidated Metropolitan Statistical Area (CMSA); Redesignation of the New Orleans CMSA to Attainment

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rulemaking.

**SUMMARY:** On October 15, 1994, the State of Louisiana submitted a revised maintenance plan and request to redesignate the New Orleans CMSA ozone nonattainment area to attainment. The New Orleans CMSA is comprised of six parishes: Jefferson, Orleans, St. Charles, St. Bernard, St. John the Baptist, and St. Tammany. Maintenance and contingency plans are not included in the action for the parishes of St. John the Baptist and St. Tammany. St. John the Baptist Parish was previously redesignated to attainment, and St. Tammany Parish has never been designated as nonattainment.

This maintenance plan and redesignation request was initially submitted to the EPA on April 23, 1993. Although the EPA deemed this initial submittal complete on September 10, 1993, certain approvability issues existed. The State of Louisiana addressed these approvability issues and has revised its submissions. Under the Clean Air Act (CAA), nonattainment areas may be redesignated to attainment if sufficient data are available to warrant the redesignation and the area meets the other CAA redesignation requirements. In this action, EPA is approving Louisiana's redesignation request because it meets the maintenance plan and redesignation requirements set forth in the CAA, and EPA is approving the 1990 base year emissions inventory. The approved maintenance plan will become a federally enforceable part of the State Implementation Plan (SIP) for Louisiana.

In the Final Rules Section of this Federal Register, the EPA is approving this redesignation request as a direct final rulemaking without prior proposal because the EPA views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

**DATES:** Comments on this proposed rule must be postmarked by November 1, 1995. If no adverse comments are received, then the direct final rule will be effective on December 1, 1995.

**ADDRESSES:** Comments should be mailed to Thomas H. Diggs, Chief, Air Planning Section (6PD-L), U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733. Copies of the State's petition and other information relevant to this action are available for inspection during normal hours at the following locations:

U.S. Environmental Protection Agency, Region 6, Air Planning Section (6PD-L), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733.

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

Louisiana Department of Environmental Quality, Office of Air Quality, 7290 Bluebonnet Boulevard, Baton Rouge, Louisiana 70810.

Anyone wishing to review this petition at the Region 6 EPA office is asked to contact the person below to schedule an appointment 24 hours in advance.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mick Cote, Air Planning Section (6PD-L), EPA Region 6, telephone (214) 665-7219.

**SUPPLEMENTARY INFORMATION:** See the information provided in the direct final rule which is located in the Rules Section of this Federal Register.

List of Subjects in 40 CFR Parts 52 and 81

Environmental protection, Air pollution control, Area designations, Hydrocarbons, Incorporation by reference, Intergovernmental regulations, National Parks, Reporting